

## CIVIL COVER SHEET

Case 2:11-cv-07317-TP Document 1 Filed 11/25/11 Page 1 of 24  
 The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM)

## I. (a) PLAINTIFFS

J  
CITER BROTHERS(b) County of Residence of First Listed Plaintiff  
(EXCEPT IN U.S. PLAINTIFF CASES)

MONTGOMERY

(c) Attorney's (Firm Name, Address, and Telephone Number) VICKI PIONTEK  
451 ALLENTOWN RD, CANTON, PA 19446  
677-737-8617

## II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

1 U.S. Government Plaintiff

 Federal Question  
 U.S. Government Not a Party

2 U.S. Government Defendant

 4 Diversity  
(Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES

(Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	<input checked="" type="checkbox"/> PTF	<input type="checkbox"/> DEF	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> PTF	<input checked="" type="checkbox"/> DEF
Citizen of Another State	<input type="checkbox"/> PTF	<input checked="" type="checkbox"/> DEF	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> PTF	<input type="checkbox"/> DEF
Citizen or Subject of a Foreign Country	<input type="checkbox"/> PTF	<input type="checkbox"/> DEF	Foreign Nation	<input type="checkbox"/> PTF	<input type="checkbox"/> DEF

## IV. NATURE OF SUIT

(Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<b>PERSONAL INJURY</b>	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 138	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 450 Commerce	
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 460 Deportation	
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 480 Consumer Credit	
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 490 Cable Sat TV	
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<b>LABOR</b>	<input type="checkbox"/> 510 Selective Service	
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 850 Securities Commodities Exchange	
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 720 Labor/Mgmt Relations	<input type="checkbox"/> 875 Customer Challenge	
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act	<input type="checkbox"/> 880 Other Statutory Actions	
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 890 Other Statutory Actions	
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 750 Other Labor Litigation	<input type="checkbox"/> 891 Agricultural Acts	
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 892 Economic Stabilization Act	
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing Accommodations	<input type="checkbox"/> 791 Emp. Ret. Inc. Security Act	<input type="checkbox"/> 893 Environmental Matters	
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<b>IMMIGRATION</b>	<input type="checkbox"/> 894 Energy Allocation Act	
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/ Disabilities - Employment	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 895 Freedom of Information Act	
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/ Disabilities - Other	<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 950 Constitutionality of State Statutes	

## V. ORIGIN

(Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment
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Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): *15 USC 1692 AND 47 USC 3227*Brief description of cause: *ALLEGED VIOLATION OF FDCPA AND TCPA*

VI. CAUSE OF ACTION

VII. REQUESTED IN COMPLAINT:  CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND:  Yes  No

VIII. RELATED CASE(S) IF ANY

(See instructions)

JUDGE

DOCKET NUMBER

DATE: *11/25/2011*

SIGNATURE OF ATTORNEY OF RECORD

*Julie Eber*

FOR OFFICE USE ONLY

RECEIPT #  AMOUNT  APPLYING I.P. JUDGE  MAG. JUDGE

**JP**

**CASE MANAGEMENT TRACK DESIGNATION FORM**

CHER BROTHERS

v.

NCO FINANCIAL SYSTEMS, INC.

CIVIL ACTION

**81 7317**  
NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.)
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

11/26/2011  
Date

RICHARD A. KESSLER  
Attorney-at-law

215-735-8000

215-735-3366

Telephone

FAX Number

NCO FINANCIAL SYSTEMS  
Attorney for  
RKESSLER@KESSLERLAW.US

E-Mail Address

FOR THE EASTERN DISTRICT OF PENNSYLVANIA Case 2:11-cv-07817-JP Document 1 Filed 11/25/11 Page 3 of 24 7317  
 Use this form to be used by counsel to indicate the category of the case for the purpose of assignment to an appropriate calendar.

Address of Plaintiff: 90 AONTEK, 451 AVENTUREN RD, LANCASTER, PA 19646

Address of Defendant: 507 PROUDENTIAL RD, HORSHAM, PA 19044

Place of Accident, Incident or Transaction: MONTGOMERY COUNTY, PA

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes  No

Does this case involve multidistrict litigation possibilities?

RELATED CASE, IF ANY:

Case Number: \_\_\_\_\_ Judge: \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Yes  No

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?

Yes  No

2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?

Yes  No

3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?

Yes  No

4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?

Yes  No

CIVIL (Place  in ONE CATEGORY ONLY)

A. Federal Question Cases:

1.  Indemnity Contract, Marine Contract, and All Other Contracts

B. Diversity Jurisdiction Cases:

1.  Insurance Contract and Other Contracts

2.  FELA

2.  Airplane Personal Injury

3.  Jones Act-Personal Injury

3.  Assault, Defamation

4.  Antitrust

4.  Marine Personal Injury

5.  Patent

5.  Motor Vehicle Personal Injury

6.  Labor-Management Relations

6.  Other Personal Injury (Please

7.  Civil Rights

specify)

8.  Habeas Corpus

7.  Products Liability

9.  Securities Act(s) Cases

8.  Products Liability — Asbestos

10.  Social Security Review Cases

9.  All other Diversity Cases

11.  All other Federal Question Cases

(Please specify)

(Please specify) 480 CONSENTED CREDIT

ARBITRATION CERTIFICATION

(Check Appropriate Category)

counsel of record do hereby certify:

I, Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

Relief other than monetary damages is sought.

DATE: 11/25/2011

Mark Lue

Attorney-at-Law

27859

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 11/25/2011

Mark Lue

Attorney-at-Law

27859

Attorney I.D.#

*\$350.00*  
JP

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

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CHER BROTHERS

Plaintiff,

vs.

Case No. 7317

NCO FINANCIAL SYSTEMS, INC.

Defendant.

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**NOTICE OF REMOVAL**

NOW INTO COURT, through undersigned counsel, comes defendant, NCO Financial Systems, Inc., ("NCO"), which hereby removes from the Court of Common Pleas of Montgomery County, Pennsylvania, the following described lawsuit, and respectfully states as follows:

1. NCO is the only defendant in the civil action filed by plaintiff, Cher Brothers, in the Court of Common Pleas of Montgomery County, Pennsylvania, captioned as *Cher Brothers v. NCO Financial Systems, Inc.*, Case No. 2011-25299 (hereinafter the "State Court Action").
2. Pursuant to 28 U.S.C. §§ 1441 and 1446, NCO removes the State Court Action to this Court, which is the federal judicial district in which the State Court Action is pending.
3. The complaint in the State Court Action (hereinafter the "State Court Action Complaint") asserts claims under the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692 *et. seq.*

4. Removal of the State Court Action is proper under 28 U.S.C. § 1441. If the action had originally been brought in this Court, this Court would have original, federal question jurisdiction over plaintiff's FDCPA claims per 28 U.S.C. § 1331 and 15 U.S.C. § 1692k.

5. Pursuant to 28 U.S.C. § 1446(b), NCO has timely filed this Notice of Removal. Plaintiff's Complaint was served on October 26, 2011. This Notice of Removal is filed within 30 days of receipt of the State Court Action Complaint by NCO and is, therefore, timely filed under 28 U.S.C. § 1446(b).

6. A copy of all process, pleadings and orders served upon NCO in the State Court Action is being filed with this Notice and is attached hereto as Exhibit A.

WHEREFORE, NCO Financial Systems, Inc., removes the case styled *Cher Brothers v. NCO Financial Systems, Inc.*, Case No. 2011-25299, from the Court of Common Pleas of Montgomery County, Pennsylvania, on this 25th day of November 2011.

Respectfully Submitted,

/s/ Richard A. Kessler

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Richard A. Kessler, Esquire  
PA ID # 27859  
Richard A. Kessler & Associates  
1500 Market Street, 41<sup>st</sup> Floor  
Philadelphia, PA 19102  
(215) 735-8000  
F: (215) 735-3366

CERTIFICATE OF SERVICE

I certify that on this 25th day of November 2011, a copy of the foregoing Notice of Removal was filed electronically via the ECF system. Notice of this filing will be sent to the parties of record by operation of the Court's electronic filing system and by e-mail, including plaintiff's counsel as described below. Parties may access this filing through the Court's system.

Vicki Piontek, Esquire  
[Vicki.lawyer@gmail.com](mailto:Vicki.lawyer@gmail.com)

/s/ Richard A. Kessler  
Attorney for NCO Financial Systems, Inc.

**EXHIBIT**

**“A”**

IN THE COURT OF COMMON PLEAS  
OF MONTGOMERY COUNTY, PENNSYLVANIA  
CIVIL ACTION-LAW

Cher Brothers	:	
1020 Centerville Road	:	2011-25299
Newville, PA 17241,	:	
	:	
Plaintiff	:	
Vs.	:	
NCO Financial Systems	:	
507 Prudential Road	:	Jury Trial Demanded
Horsham, Pennsylvania, 19044	:	
and	:	
John Does 1-10	:	
Defendant(s)	:	

**NOTICE**

YOU HAVE BEEN SUED IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PAGES, YOU MUST TAKE ACTION WITHIN TWENTY (20) DAYS AFTER THE COMPLAINT AND NOTICE ARE SERVED BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND A JUDGMENT MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR ANY MONEY CLAIMED OR FOR ANY OTHER CLAIM OR RELIEF REQUESTED BY THE DEFENDANT. YOU MAY LOSE MONEY OR PROPERTY OR OTHER RIGHTS IMPORTANT TO YOU.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

LAWYER REFERENCE SERVICE  
MONTGOMERY COUNTY BAR ASSOCIATION  
100 West Airy Street (REAR), NORRISTOWN, PA 19401  
(610) 279-9660, EXTENSION 201

Montgomery County Legal Aid Services  
625 Swede Street, Norristown, PA 19401  
610-275-5400

IN THE COURT OF COMMON PLEAS  
OF MONTGOMERY COUNTY, PENNSYLVANIA  
CIVIL ACTION-LAW

MAIL RECEIVED  
MONTGOMERY COUNTY  
PROTHONOTARY

201 OCT - 7 A # 01

Cher Brothers :  
1020 Centerville Road :  
Newville, PA 17241, :  
Plaintiff : 2011-25299  
Vs. :  
NCO Financial Systems :  
507 Prudential Road :  
Horsham, Pennsylvania, 19044 :  
and : Jury Trial Demanded  
John Does 1-10 :  
Defendant(s) :

**COMPLAINT**

**INTRODUCTION**

1. This is a lawsuit for damages brought by an individual consumer for Defendant(s)' alleged violations of the Telephone Consumer Protection Act, 47 USC § 227 et. seq. (hereinafter "TCPA"), as well as for Defendant(s) alleged violations of the Fair Debt Collection Practices Act, 15 U.S.C. 1692, et seq. (hereinafter "FDCPA).



2011-25299-0003  
10/7/2011 3:01:50 PM  
Complaint in  
Receipt # Z1339007 Fee \$0.00  
Mark Levy - Montgomery County Prothonotary

**JURISDICTION AND VENUE**

2. All previous paragraphs of this complaint are incorporated by reference and made a part of this complaint
3. Venue is proper in this jurisdiction because Defendant(s) regularly transact(s) business throughout this jurisdiction.
4. Defendant obtains the benefit(s) of regularly transacting business in this jurisdiction.
5. A substantially portion of the conduct complained of occurred in this jurisdiction.

**PARTIES**

6. All previous paragraphs of this complaint are incorporated by reference and made a part of this complaint.
7. Plaintiff is Cher Brothers, an adult individual with a current address of 1020 Centerville Road, Newville, PA 17241.
8. Defendant is NCO Financial Systems, a business entity engaged in the practice of debt collection throughout the United States, with a business address including but not limited to 507 Prudential Road, Horsham, Pennsylvania, 19044.
9. Defendants may include John Does 1-10, persons whose names and identities are not known to Plaintiff at this time, or whose liability is not known, but which may become known to Plaintiff following discovery. It is believed and averred that such Does played a substantial role in the commission of the acts described in this Complaint.
10. Defendants may include X,Y,Z Corporations, business entities whose names and identities are not known to Plaintiff at this time, or whose liability is not known, but which may become known to Plaintiff following discovery. It is believed and averred that such entities played a substantial role in the commission of the acts described in this Complaint.

**COUNT ONE: VIOLATION OF THE TELEPHONE  
CONSUMER PROTECTION ACT (TCPA) 47 USC § 227 ET. SEQ.**

11. The previous paragraphs are incorporated by reference and made a part of this complaint.
12. In 1991, Congress enacted the Telephone Consumer Protection Act, 47 U.S.C. § 227 (TCPA), in response to a growing number of consumer complaints regarding certain telemarketing practices.
13. The TCPA regulates, among other things, the use of automated telephone equipment, or "autodialers." Specifically, the plain language of section 227(b)(1)(A)(iii) prohibits the use of autodialers to make any call to a wireless number in the absence of an emergency or the prior express consent of the called party.
14. 47 U.S.C. § 227(b) states in pertinent part:
  - (b) Restrictions on use of automated telephone equipment
    - (1) **Prohibitions**  
It shall be unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States:
      - (A) to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice---  
\*\*\*
      - (iii) to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call;

**(3) Private right of action**

A person or entity may, if otherwise permitted by the laws or rules of court of a State, bring in an appropriate court of that State---

(A) an action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation,

(B) an action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each such violation, whichever is greater, or

(C) both such actions.

If the court finds that the defendant willfully or knowingly violated this subsection or the regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under subparagraph

(B) of this paragraph.

15. On January 4, 2008, the FCC released a Declaratory Ruling confirming that autodialed and prerecorded message calls to a wireless number by a creditor (or on behalf of a creditor) are permitted only if the calls are made with the "prior express consent" of the called party. *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 ("FCC Declaratory Ruling")*, 23 F.C.C.R. 559, 23 FCC Rcd. 559,43 Communications Reg. (P&F) 877, 2008 WL 65485 (F.C.C.) (2008).

16. The FCC "emphasize[d] that prior express consent is deemed to be granted only if the wireless number was provided by the consumer to the creditor, and that such number was provided during the transaction that resulted in the debt owed." *FCC Declaratory Ruling*, 23 F.C.C.R. at 564-65 (10).

17. According to findings by the Federal Communication Commission ("FCC"), the agency Congress vested with authority to issue regulations implementing the TCPA, such calls are prohibited because, as Congress found, automated or prerecorded telephone calls are a greater nuisance and invasion of privacy than live solicitation calls, and such calls can be costly and inconvenient. The FCC also recognized that wireless customers are charged for incoming calls whether they pay in advance or after the minutes are used. *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003).
18. Under the TCPA and pursuant to the FCC's January 2008 Declaratory Ruling, the burden is on Defendants to demonstrate that Plaintiff provided express consent within the meaning of the statute. *See FCC Declaratory Ruling*, 23 F.C.C.R. at 565 (10).
19. At all times relevant, Plaintiff was a "person" as defined by 47 U.S.C. § 153(10).
20. At a certain time, prior to 2011, Plaintiff engaged in a consumer credit transaction which was the subject of Defendant's collection activity.
21. Plaintiff's account went into collections, and the account was referred to Defendant(s) for the purpose of collection.
22. At no time did Plaintiff provide Defendant(s) with Plaintiff's cell phone number.

23. At no time did Plaintiff provide the original alleged creditor for the account that was the subject of Defendant's collection activity with Plaintiff's cell phone number.
24. Defendant contacted Plaintiff on Plaintiff's cellular telephone. Plaintiff received one or more calls from Defendant on Plaintiff's cellular phone.
25. It is believed and averred that Defendant(s) used some method or mechanism to look up Plaintiff's cell phone number in order to facilitate the calls.
26. It is believed and averred that one or more of the telephone calls by Defendant to Plaintiff on Plaintiff's cellular telephone occurred via an "automatic telephone dialing system," as defined by 47 U.S.C. § 227(a)(1), and all calls that are the subject of this Complaint occurred within four years of the filing of this Complaint.
27. 47 U.S.C. § 227(b)(1)(A) defined an "automatic dialing system" as follows.

(a) Definitions

As used in this section -

- (1) The term "automatic telephone dialing system" means equipment which has the capacity -
  - (A) to store or produce telephone numbers to be called, using a random or sequential number generator; and
  - (B) to dial such numbers.

28. It is believed and averred that one or more of the telephone calls placed by Defendant to Plaintiff's cellular telephone were made using an "automatic telephone dialing system," as defined by 47 U.S.C. § 227 et. seq.
29. Such automated calls were made by Defendant(s) to Plaintiff's cellular telephone service as defined in 47 U.S.C. § 227(b)(1)(A)(iii).
30. The complained of telephone calls did not constitute calls not for emergency purposes as defined by 47 U.S.C. § 227(b)(1)(A)(i).
31. During the transaction that resulted in the alleged debt owed, Plaintiff did not provide a wireless or cellular number to Defendant, nor otherwise provide express consent to receive automated calls by Defendant on Plaintiff's cellular telephone.
32. Plaintiff did not provide "express consent" allowing Defendant, or the original creditor to place telephone calls to Plaintiff's cellular phone utilizing an "automatic telephone dialing system," within the meaning of 47 U.S.C. § 227(b)(1)(A).
33. Plaintiff did not list a cellular phone number in or on any documents at any time during the transaction that resulted in the Purported Debt.

34. Plaintiff did not verbally provide Defendant(s), or any other party, with a cellular phone number at any time during the transaction that resulted in the Purported Debt, or thereafter.
35. Defendant's telephone calls to Plaintiff's cellular phone utilizing an "automatic telephone dialing system" for non-emergency purposes and in the absence of Plaintiff's prior express consent violated 47 U.S.C. § 227(b)(1)(A).
36. Under the TCPA and pursuant to the FCC's January 2008 Declaratory Ruling, the burden is on Defendant to demonstrate that Plaintiff provided express consent within the meaning of the statute.

**COUNT TWO: VIOLATION OF THE FAIR DEBT COLLECTION PRACTICES ACT,**

**15 USC 1692 f, et. seq.**

37. All previous paragraphs of this complaint are incorporated by reference and made a part of this portion of the complaint.

38. Plaintiff is a consumer debtor as defined by the Fair Debt Collections Practices Act (FDCPA), 15 USC 1692 et. Seq.

39. Defendant is a debt collector as defined by the FDCPA, 15 USC 1692 et. seq.

40. At all times mentioned herein, Defendant(s) was attempting to collect on an alleged consumer debt against Plaintiff.

41. 15 USC 1692 f of the FDCPA prohibits a debt collector from engaging in any unlawful, illegal or unconscionable collection activity while Defendant(s) was attempting to collect a consumer debt from Plaintiff.

42. By violating TCPA, Defendant(s) also violated 15 USC 1692 f, et. seq., by engaging in unlawful, illegal and unconscionable collection activity.

## **LIABILITY**

43. All previous paragraphs of this complaint are incorporated by reference and made a part of this complaint.
44. Defendant(s) is liable to Plaintiff(s) for the acts committed by its agents under the doctrine of respondeat superior because Defendant's agents were acting within the scope of their employment with Defendant.
45. In the alternative, Defendant is liable to Plaintiff(s) under the doctrine of negligent supervision.
46. In the alternative, Defendant is liable to Plaintiff(s) under the doctrine of the non-delegable duty.
47. In the alternative, Defendant(s) is liable for the conduct of its agents / employees under the theory of joint and several liability because Defendant and its agents / employees were engaged in a joint venture and were acting jointly and in concert.
48. Any mistake made by Defendant would have included a mistake of law.
49. Any mistake made by Defendant would not have been a reasonable bona fide mistake.

## **DAMAGES**

50. All previous paragraphs of this complaint are incorporated by reference and made a part of this portion of the complaint.
51. At least \$1.00 actual damages, including but not limited to phone, fax, stationary, postage, etc.
52. Plaintiff believes and avers that Plaintiff is entitled to \$1,000.00 statutory under the FDCPA 15 USC 1692k.
53. Plaintiff believes ad avers that Plaintiff is entitled to at least \$500.00 per call that Plaintiff received from Defendant(s) in violation of TCPA.
54. Plaintiff believes and avers that there was at least 20 separate automated telephone calls from Defendant(s) to Plaintiff's cell phone, thereby warranting \$10,000 in statutory damages.
55. Plaintiff suffered emotional distress with a Dollar value to be proven at trial.

**ATTORNEY FEES**

56. All previous paragraphs of this complaint are incorporated by reference and made a part of this complaint.

57. Plaintiff is entitled to reasonable attorney fees in this matter at a rate of no less than \$350 per hour, or other rate that this Honorable Court deems just and fair, pursuant the fee shifting provision of TCPA and FDCPA.

58. Plaintiff's attorney fees of \$1,225 at a rate of \$350.00 per hour, are enumerated below.

a. Consultation with client	.5
b. Drafting, editing, review, filing and serving complaint and related documents	1
c. Follow up With Defense	2
<hr/> $3.5 \times \$350 = \$1,225$	

59. Plaintiff's attorney fees continue to accrue as the case move forward.

60. The above stated attorney fees include prosecution of this complaint to the date of the instant filing and reasonable follow up.

**OTHER RELIEF**

61. All previous paragraphs of this complaint are incorporated by reference and made a part of this portion of the complaint.
62. Plaintiff seeks injunctive relief barring further **unlawful collection activity**.
63. Plaintiff seeks such other relief as this Honorable Court may deem just and proper.
64. Plaintiff requests a jury trial in this matter.

Wherefore, Plaintiff demands judgment against Defendant(s) in the amount of no less than \$12,226.

\$1.00 actual damages more or less for postage, stationary , fax, etc.

\$1,000.00 statutory damages under the FDCPA

\$10,000 statutory damages under TCPA

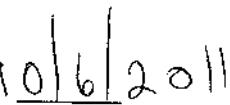
\$1,225.00 attorney fees

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\$12,226

Plaintiff seeks such other relief as the Court deems just and fair.

  
\_\_\_\_\_  
Vicki Piontek, Esquire  
Supreme Court ID Number 83559  
Attorney for Plaintiff  
951 Allentown Road  
Lansdale, PA 19446  
717-533-7472  
Fax: 866-408-6735  
palaw@justice.com

  
\_\_\_\_\_  
10/6/2011  
Date

IN THE COURT OF COMMON PLEAS  
OF MONTGOMERY COUNTY, PENNSYLVANIA  
CIVIL ACTION-LAW

Cher Brothers :  
1020 Centerville Road :  
Newville, PA 17241, :  
Plaintiff :  
Vs. :  
NCO Financial Systems :  
507 Prudential Road :  
Horsham, Pennsylvania, 19044 :  
and :  
John Does 1-10 :  
Defendant(s) :  
Jury Trial Demanded

**VERIFICATION**

I, Cher Brothers, have read the attached complaint. The facts stated in the complaint are true and accurate to the best of my knowledge, understanding and belief.

Cher Brothers 10/3/14  
Cher Brothers Date